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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

T&D DAIRY, LLC, a Washington
limited liability company; TOM VAN
RUITEN and DONNA VAN RUITEN,
husband and wife
Plaintiffs,

vs.

PACIFICORP, d/b/a PACIFIC POWER,
a foreign corporation
Defendant.

No. CV-09-3038-LRS

PROTECTIVE ORDER

1 This Protective Order is entered pursuant to FRCP 26(c). The parties have
2 stipulated and agreed, and the Court recognizes, that the parties and non-party
3 witnesses to this action may possess private, confidential customer and/or
4 proprietary information, which may be subject to discovery in this action, but
5 which should not be made available to competitors or to the public generally.
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7 Accordingly, IT IS HEREBY ORDERED as follows:
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9 Discovery in this case shall be governed by this protective order as follows:
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11 1. Definitions of terms used in this Protective Order (“Protective
12 Order”) are:

13 (a) “Proceeding” means the matter captioned *T&D Dairy, LLC, a*
14 *Washington Limited Liability Company, Tom Van Ruiten and Donna Van*
15 *Ruiten, husband and wife, Plaintiffs, v. PacifiCorp, d/b/a Pacific Power, a*
16 *foreign corporation, Defendants.*
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18 (b) “Confidential” refers to confidential and/or proprietary
19 information of the parties herein.
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21 (c) “Document” refers to any record, book, pamphlet, periodical,
22 letter, report, memorandum, notation, message, telegram, cable, record,
23 study, working paper, file, chart, graph, photograph, film, index, tape,
24 correspondence, record of purchase or sale, contract, agreement, lease,
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1 invoice, e-mail, electronic or other transcriptions or taping of telephone or
2 personal conversations or conferences, or any and all other written, printed,
3 typed, punched, taped, filmed, or graphic matter, or tangible thing, however
4 produced or reproduced.
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6 2. A party (including any non-party to the Proceeding) producing
7 documents in connection with this proceeding, may designate such documents as
8 “Confidential” by stamping or typing the designation on the face of the documents
9 produced. If a party inadvertently produces documents that bear an improper
10 designation, the producing party may redesignate such documents by providing
11 written notice to the receiving party within seven days of discovering the
12 inadvertent production. Upon receiving such written notice, the receiving party
13 shall treat the documents according to the new designation.
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17 3. Deposition testimony or other testimony may be designated
18 “Confidential” either before the testimony is given, at the time the testimony is
19 given, or within thirty days of receipt of the transcript. The transcript of the
20 designated testimony shall be bound in a separate volume and marked by the court
21 reporter with the appropriate legend as directed by the designating party.
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1 4. Documents designated “Confidential” shall not be disclosed or used
2 for any purpose other than the defense, prosecution or settlement of this
3 Proceeding.
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5 5. “Confidential” documents may be seen only by:

6 (a) This Court and its personnel;
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8 (b) each party’s attorneys and the staff of those attorneys;

9 (c) independent experts and consultants, including experts or
10 consultants who are not retained or are not expected to testify
11 (Pursuant to Paragraph 6 of this Protective Order);
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13 (d) court reporters, videographers, commercial copy
14 services, translators, demonstrative exhibit preparers, trial consultants,
15 and data and computer support organizations hired by and assisting
16 the attorneys for any party;
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18 (e) Any person from whom testimony is taken, where such
19 person was an author or a recipient of the designated document or
20 where counsel for the designating party has, either before or during
21 the deposition, approved the disclosure of such documents to that
22 person, except that such person may not retain any such documents;
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24 and
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1 (f) the individual parties and officers, directors or employees
2 (and former officers, directors and employees) of any party. Neither
3 the “Confidential” documents nor the information contained therein
4 shall be disclosed to any other persons. “Confidential” documents
5 may be shown only to the above-described people or entities when
6 disclosure of the documents is necessary for purposes of this
7 Proceeding and the disclosing party has obtained written agreement,
8 in the form attached hereto as Exhibit A for individuals and Exhibit B
9 for organizations, by the person or entity receiving the disclosure to be
10 bound by this Protective order and to consent to the jurisdiction of the
11 United States District Court of the Eastern District of Washington for
12 purposes of enforcing this Protective Order. The people listed in
13 paragraph 5(b) shall be bound by the terms of this protective order, by
14 counsel’s signature on this stipulation and Protective Order.
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20 6. “Confidential” documents may only be shown or provided to experts
21 and consultants by counsel upon such counsel obtaining a written agreement, in the
22 form attached hereto as Exhibit A from individuals and Exhibit B from
23 organizations, wherein such individual(s) or organization(s) agree to be bound by
24 this Protective Order and to consent to the jurisdiction of the United States District
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1 Court for the Eastern District of Washington for purposes of enforcing this
2 Protective Order. Such experts and consultants may use such Confidential
3 documents and the information contained therein to furnish technical or other
4 expert services or to give testimony, or otherwise to assist in trial preparations for
5 purposes of this Proceeding and for no other purpose, and such experts and
6 consultants may not disseminate or disclose such confidential documents or the
7 information contained therein to others.
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10 7. Nothing herein shall impose any restrictions on the use or disclosure
11 by a party of documents or portions of documents obtained by such party
12 independent of discovery from a party in this action, whether or not such
13 documents or portions of documents are also obtained through discovery in this
14 action, or from disclosing its own "Confidential" documents or portions of
15 documents as it deems appropriate. Nor shall this Protective Order restrict the use
16 or disclosure of documents or portions of documents that: (a) are in the public
17 domain at the time of the use or disclosure; (b) become part of the public domain
18 after the time of the use or disclosure, through no fault of the receiving party; (c)
19 were received from a third party who was under no obligation of confidentiality to
20 the party that produced the documents; or (d) are derived or obtained independent
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1 of the use or disclosure. The receiving party shall have the burden of proving that
2 the use of disclosure satisfies one or more of these criteria.

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4 8. If any party or individual who has received documents designated as
5 “Confidential” is served with a subpoena or other judicial process demanding the
6 production or disclosure of such documents, the receiving party or individual: (a)
7 shall provide all parties to this Proceeding with a copy of such subpoena or other
8 judicial process within ten days following receipt thereof; (b) shall inform the
9 subpoenaing party that the requested documents are governed by the terms of the
10 Protective Order in this case; and (c) shall not disclose or produce “Confidential”
11 documents unless (i) the subpoenaed party receives written permission from the
12 designating party, or (ii) the designating party fails to file a motion to protect
13 disclosure of such documents within 14 days of actual receipt of the ten day notice
14 described above.
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18 9. If “Confidential” documents produced in accordance with the
19 Protective Order are disclosed to any person other than in the manner authorized
20 by this Protective Order, the party responsible for the disclosure shall immediately
21 bring all pertinent facts related to such disclosure to the attention of counsel of
22 record, and, without prejudice to other rights and remedies of the party that
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1 produced the documents, shall make every reasonable effort to prevent any further
2 disclosure by it or by the person(s) who received such documents.

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4 10. This Protective Order shall not restrict disclosure of "Confidential"
5 documents to this Court, its personnel, or any appellate court or federal district
6 court in accordance with this paragraph. All unredacted "Confidential" materials
7 (including depositions as applicable) shall be filed in sealed envelopes or other
8 appropriately sealed containers on which shall be recorded the title of this action,
9 the general nature of the contents of such sealed envelope or other container, and a
10 statement substantially in the following form:
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13 **FILED UNDER SEAL: This envelope, filed in this case by**
14 **(party), contains confidential documents covered by a**
15 **judicial Protective Order. This envelope is not to be opened**
by, nor the contents hereof revealed to, anyone except the
Court and thereafter resealed.

16 Where filing is electronic filing is required of materials otherwise subject to this
17 Protective Order, the parties shall confer prior to such filing to agree to appropriate
18 and required procedures.
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20 11. This Protective Order shall be without prejudice to the right of any
21 party to this action to bring before the Court at any time the question of whether
22 any particular information is or is not "Confidential." This includes the ability to
23 question whether a document filed under seal was appropriately designated
24 "Confidential," and if agreement by the parties cannot be reached as to
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1 categorization, the objecting party may apply to the Court for an order
2 redesignating such documents, and, if applicable, unsealing such documents. The
3 designating party shall have the burden of sustaining the designation.
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5 12. Upon final adjudication of this Proceeding, unless otherwise agreed to
6 in writing by an attorney for the producing party, any party that has received
7 documents designated as "Confidential" shall destroy such documents. Such
8 attorney shall, in addition, obtain the return of copies of such documents including
9 all summaries, compilations and related materials reflecting information contained
10 in such Confidential documents from any individual(s) or organization(s) who
11 have received copies or have been given access to such Confidential documents,
12 and shall destroy the same. 13. The terms of this Protective Order shall
13 survive and remain in full force and effect after the termination of the Proceeding.
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17 SO ORDERED.

18 DATED this 11th day of June, 2010.
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21 *s/Lonny R. Suko*

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23 LONNY R. SUKO
24 CHIEF UNITED STATES DISTRICT COURT
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EXHIBIT A**AGREEMENT TO BE BOUND BY TERMS OF PROTECTIVE ORDER**

1. The undersigned has read the foregoing Stipulated Protective Order (the “Protective Order”) signed by the parties thereto and entered by this Court in *T&D Dairy, LLC, a Washington Limited Liability Company, Tom Van Ruiten and Donna Van Ruiten, husband and wife, Plaintiffs, v. PacifiCorp, d/b/a Pacific Power, a foreign corporation, Defendants*, in the United States District Court for the Eastern District of Washington. I understand its contents, and hereby undertake and agree to abide by its terms including, without limitation, those terms regarding the use of any document designated “Confidential” (as defined in the Protective Order), and any information contained therein.
2. I understand that I am to retain all copies of any of the materials that I receive that have been designated as confidential in a container, cabinet, drawer, room, secure computer or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned

responsibilities in this case. I will then return all confidential documents and things that come into my possession and that I have prepared relating to such documents and things, to counsel for the party by whom I am retained or engaged. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed on me by the protective order.

3. The undersigned agrees to submit to the jurisdiction of the United States District Court for the Eastern District of Washington for the purpose of enforcing the terms and conditions of the Protective Order.

Date

Name (Print or type)

Signature

Company (if applicable)

EXHIBIT B**AGREEMENT TO BE BOUND BY TERMS OF PROTECTIVE ORDER**

1. The undersigned, as an authorized representative of the organization specified below and on behalf of myself and its employees, representatives and agents, have read the foregoing Stipulated Protective Order (the “Protective Order”) signed by the parties thereto and entered by this Court in *T&D Dairy, LLC, a Washington Limited Liability Company, Tom Van Ruiten and Donna Van Ruiten, husband and wife, Plaintiffs, v. PacifiCorp, d/b/a Pacific Power, a foreign corporation, Defendants*, in the United States District Court for the Eastern District of Washington, understand its contents, and hereby undertakes and agrees that its terms including, without limitation, those terms regarding the use of any document designated “Confidential” (as defined in the Protective Order), and any information contained therein, apply to the organization and its employees, representatives, and agents, and that the organization shall take responsibility for any violations of the Protective Order by any of

1 its employees, representatives, and agents who receive such
2 documents.

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4 2. On behalf of myself and the organization, its employees,
5 representatives and agents, I understand that the organization is to
6 retain all copies of any of the materials that it receives that have been
7 designated as confidential in a container, cabinet, drawer, room,
8 secure computer or other safe place in a manner consistent with the
9 Protective Order and that all copies are to remain in the organization's
10 custody until it has completed its assigned responsibilities in this case.
11 The organization will then return all confidential documents and
12 things that come into its possession and that it has prepared relating
13 to such documents and things, to counsel for the party by whom the
14 organization is retained or engaged. I acknowledge on behalf of
15 myself, the organization and its employees, representatives and agents
16 that such return or the subsequent destruction of such materials shall
17 not relieve me, the organization, or its employees, representatives or
18 agents from any of the continuing obligations imposed on me by the
19 Protective Order.
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- 1 3. The organization further agrees to submit to the jurisdiction of the
2 United States District Court for the Eastern District of Washington,
3 for the purpose of enforcing the terms and conditions of the Protective
4 Order.
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8 Date _____

_____ Name (Print or type)

9 _____
10 Signature

11 _____
12 Organization/Company (Print or type)
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